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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 767

FRANK W. LEWIS and LOLA G. LEWIS,
Petitioners,

vs.

NEW JERSEY EXPRESS CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Question Presented

1. Should this Court review, on certiorari, a jury verdict for defendant in an automobile negligence case where the sole contention presented is that the verdict was against the weight of the evidence and both the trial court and the Court of Appeals have rejected that contention?

Opinion Below

The opinion of the United States Court of Appeals for the Third Circuit, from whose judgment the petitioners have applied for review, is reported as follows: *Lewis* v. *New Jersey Express Corporation*, 309 F. 2d 394 (3rd Cir. 1962).

Statement of the Case

This is an automobile personal injury and property damage negligence action brought on diversity grounds in the United States District Court for the District of New Jersey.

After a trial on the merits, the jury returned a verdict against the plaintiff husband-driver and the plaintiff wife-passenger and a verdict in favor of the defendant against the husband-driver on the defendants' property damage counterclaim. Both the trial court and the Court of Appeals rejected the contention that the verdict was against the weight of the evidence.

ARGUMENT

POINT I

Certiorari should be denied because the petition for the writ presents only an attempt to re-argue a question of fact that was rejected by the jury, the trial court and the Court of Appeals.

Petitioners seem to argue that the writ should be granted because:

1. The trial court applied an erroneous legal standard in denying their motion for a new trial.

2. The Court of Appeals upheld the denial of a motion for a new trial on a ground different from that advanced by the trial judge.

3. The Court of Appeals has no power to affirm a judgment unless it affirms on the ground utilized by the court below.

4. The Court of Appeals erroneously affirmed on the ground that petitioners had failed to move for directed verdict at the trial.

We believe that these points are irrelevant. There is no quarrel with the charge made by the trial court to the jury or with the trial judge's conduct of the trial. Under these circumstances if there were factual issues requiring decision in this case, then the matter was properly left to the jury. If the matter was one that was properly left to the jury to decide, then petitioners' arguments are irrelevant for they are directed only to the refusals of the lower courts to interfere with the jury's decision. In this respect, the Court of Appeals said:

> "The record unmistakably shows substantial eye-witness evidence that the accident involved was caused by the negligence of the appellant driver and that the operator of appellee's truck was not at fault. There is also evidence to the contrary. In the circumstances the district judge, most properly, submitted those factual questions to the jury. The verdicts have a firm evidential basis. The trial judge rightfully refused to disturb them." 309 F. 2d at 394.

Certainly the experienced judges of the Court of Appeals who sat in this case can be trusted to decide whether the record of an automobile personal injury and property damage negligence case does or does not present issues of fact calling for resolution by a jury. All this case involves is an attempt by disgruntled litigants to secure, by use of this Court's valuable time, re-litigation of factual contentions that have been successively rejected by a jury, a trial

judge and a Court of Appeals. The issues raised in this case do not even remotely approach any of the announced criteria for the granting of the writ sought by petitioners. *Rule* 19, *U. S. Supreme Court Rules.*

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for the writ of *certiorari* should be denied.

Respectfully submitted,

H. CURTIS MEANOR,
Counsel for Respondent.